HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. 1492/2001

Sohan Singh & Another

Vs

State of U.P. & others

Approved for reporting.

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Not approved for reporting Date of decision 18.5.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1492 (MS) OF 2001

(Old No. 10742/85)

1. Sohan Singh,
   S/o Bhag Singh,
2. Harbhajan Singh,
   S/o Sohan Singh,
   Both above, residents of
   Village Bangawan, Tehsil- Khatima,
   District-Nainital. .....Petitioners.

Versus

1. State of U.P.
2. 1st Addl. District Judge, Nainital.
3. Prescribed Authority, S.D.M., Khatima, District-Nainital, Uder U.P. Imposition of Ceiling on Land Holdings Act.
4. Hari Singh, S/o Dr. Rameshwar Singh,
   R/o Village Radhuliya, Tehsil Khatima,
   District-Nainital. .....Respondents.

Dated: 18.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Dharam Veer Singh, Sr. Advocate, assisted by Sri B.S. Parihar, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 3.

By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents no. 1 and 3 not to dispossess or evict the petitioners form the holdings i.e. Plot No. 29/3 Area 51 Bigha, 4 Biswa and Plot No. 29/2 Area 21 Bigha total Area 72 Bigha 4 Biswa ion Village Bangawana, Tehsil Khatima, District Nainital in pursuance to the judgment in Ceiling Case No. 51/229 of 19075-76 : State Vs. Hari Singh dated 30.06.1976 (Annexure No. 1 to the writ petition). Further prayer has been made for a writ of certiorari quashing the order dated 24.05.1983 passed by the respondent no. 3

(Annexure No. 3 to the writ petition) and order dated 25.03.1985 passed by the respondent no. 2 (Annexure No. 4 to the writ petition).

Briefly stated, the petitioner has filed an application U/s 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act. According to the case of the petitioner, they were admitted as the sub-lessee of Plot No. 29/3 Area 51 Bigha and 29/2 Area 21 Bigha total area 72 Bigha 4 Biswa in Village Bangwan Tehsil Khatima, District Nainital by respondent no. 4 and possession was accordingly delivered to them and since then they are in possession and recorded as such. According to the petitioners, they being sub-lessee of the respondent no. 4 are legal occupants and tenure holders of the plots referred above.

During the proceedings under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act in the year, 1975, a notice was issued to Sri Churamani by the Prescribed Authority. However, the petitioners have claimed that no notice was issued to the petitioners as at that time although they were tenure holders of Plot No. 29/3 Area 51 Bigha, 4 Biswa.

The petitioners, therefore, preferred an application before the Prescribed Authority requesting that they may be heard and they may not be dispossessed. The said application was rejected by the respondents. Thereafter, the petitioners preferred an appeal and the same also met the same fate.

In ***Dilbag Singh Vs. State of U.P. and others (H.C.) 1978 RD Page 230,*** it has been observed as under

"In view of the rival submissions on the first question, the controversy gets considerably narrowed. In the full Bench case of Upper Ganges Sugar Mills Ltd. (supra) in paragraph 20 the Full Bench held-

"The position, therefore, is that under the definition of the term 'tenure-holder' and the scheme of the Act the holder

of a holding has to be considered to be a tenure-holder, whether or not he is recorded as such in the revenue records and there is nothing in the provisions of the Act that precludes his from the right of filing an objection to the statement issued by the Prescribed Authority to another person."

Section 11(2) and 11(3) of the Act provide-

"(2) The Prescribed Authority shall, on application made within thirty days from the date of the order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence set aside the order and allow such tenure-holder to file objection against the statement prepared under Section 10 and proceed to decide the same in accordance with the provisions of Section 12.

(3) Subjection to the provisions of sub-section (2) and Section 13, the order of the Prescribed Authority shall be final and conclusive and be not questioned in any court of law".

Dealing with sub-section (2) the Full Bench in paragraph 27 held that there appears to be no valid reason why the benefit of Section 11 (2) may not be available to every 8 tenure-holder and why Section 11(2) should be regarded as limited to those tenure-holders only who have been served with a notice under Section 10(2). It went on to hold-

"In my opinion, the words 'a tenure-holder aggrieved by such order' embrace even those tenure-holders who have not been served with a notice under Section 10(2) and their scope is no manner curtailed by the words passed in hs absence and on sufficient cause bering shown for his absence'. A tenure-holder who has not been served with a notice and has also not been made a party would be treated as having been absent and the fact that he was not a party would itself sufficiently account for his basence. Section 11(2) should not, to my mind, be interpreted as withholding its benefit from a

person who has committed no default at all while extending it to a person who has committed a default but furnishes. Sufficient case for it."

It is thus evident that Section 11(2) permits tenure-holders to file objections. Such tenure-holders may be those who have been served with a notice and the statement under Section 10(2). It also includes tenure holders who have not been given or served with any such notice or statement. The construction put by the Full Bench on Section 11(2) embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other persons, wish to challenge that declaration or notification thereof in the gazette under Sec. 14. They are all entitled to file an objection under Section 11 (2) and get an adjudication thereon as required by Section 12.

Section 9 to 13 are in their operation and effect independent of Section 14 (3) to (7). Even though sub-sections (3) to (7) of Section 14 were on the statute book, yet the Full bench took the view that a tenure-holder would be entitled to file an objection under Section 11(2) even though he had not been given any notice. The legislature would be presumed to have this decision in its mind when it repealed sub-sections (3) to (7) Section 14 but did not touch the provisions of Section 9 to 13, by excluding from their purview, persons who claimed to be tenure holders, but who had not been served with a notice or statement under Section 10(2). In substance the repeal of Section 14(3) to (7) takes away the right of a lessee from a tenure-holder, to be heard."

Writ petition is allowed. The matter is sent back to the Prescribed Authority for deciding afresh in accordance with

law as well as in the light of the judgment of ***Upper Ganges Sugar Mills Ltd V. Civil Judge, Bijnor 1969 R.D. 202.***

No order as to costs.

(Rajesh Tandon, J.)

18.05.2006

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